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OGC 67-0095

18 January 1967

MEMORANDUM FOR THE RECORD

SUBJECT: Heine v. Raus - Time Limitations on Appeal

1. Under date of 29 December 1966, Heine filed with the District Court for the District of Maryland his Notice of Appeal. Appeals from this court are heard by the Court of Appeals Fourth Circuit sitting in Richmond. The time limitations on appeal are those set out in the Federal Rules of Civil Procedure (FRCP) or the Rules of the Fourth Circuit. These are:

A. Time for Appeal. Notice of appeal must be filed with the District Court within 30 days after entry of judgment (FRCP 73(a)). In cases where the United States is a party, the limitation is 60 days.

B. Docketing of Appeal. Within 40 days after filing Notice of Appeal the record on appeal must be filed with the Court of Appeals. Upon good cause being shown, the District Court may extend this time to a period of not more than 90 days after filing Notice of Appeal. (Circuit Court Rule 11, see also FRCP 73(g))

C. Printing of Record. Within 10 days after the filing of the record the appellant must furnish the appellee with a statement of the parts of the record he proposes to print. (Circuit Court Rule 10. 3)

D. Filing of Briefs.

1. Appellant must file his brief within 30 days after filing of the record.

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2. Appellee must file his brief within 30 days of the due date of the appellant's brief.

3. If appellant is to file a reply brief, he must file it within 10 days of the due date for the filing of the appellant's brief. (Circuit Court Rule 12)

E. Computation of Time. In computing any period of time, the day of the act, event or default from which the designated period of time begins to run is not included. The last day of the period, however, is included, unless it be a Saturday, Sunday or a legal holiday. (FRCP 6)

F. Enlargement of Time. The court may in its discretion, with or without motion or notice, enlarge a time period if the request be made before the expiration of the original period or the extension thereof granted by the previous order. Further, the court in its discretion, upon motions made after the expiration of a specified period, permit an act to be done when the failure was the result of excusable neglect, except that it may not extend the time limitations set out in certain subsections of Rule 50, 52, 59, 60 and 73. (FRCP 6(b)) Specifically, the court may not extend the time provided for in Rule 73(a) for filing notice of appeal or in Rule 73(g) for the docketing of the appeal. These limitations are considered to be jurisdictional.

2. The members of the Court of Appeals Fourth Circuit are:

Clement F. Haynsworth, Jr., Chief Judge  
Simon E. Sobeloff  
Herbert S. Boreman  
Albert V. Bryan  
J. Spencer Bell  
Harrison L. Winter  
J. Braxton Craven, Jr.

Except for Judge Sobeloff, its complexion is essentially conservative.

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Assistant General Counsel

cc: SB Division